

Before the  
Federal Communications Commission

In the Matter of )  
 )  
Advanced Television Systems )  
and )  
Their Impact Upon the Existing )  
Television Broadcast Service )

MM Docket No. 87-268

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**PETITION FOR RECONSIDERATION**

Ch 32 Hispanic Broadcasters, Ltd. ("Hispanic"), by its counsel, hereby seeks reconsideration of the Commission's *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24 (released February 32, 1998) ("MO&O"), in the above-captioned proceeding.

In support of this petition, the following is stated:

**I. Background.**

On January 2, 1996, Hispanic filed an application for a new television station to operate on Channel 32 at Pueblo, Colorado. Hispanic's application included a request for waiver of the Commission's order in *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, 1987 FCC LEXIS 3477 (July 17, 1987), 52 Fed.Reg. 28346 (1987) ("Freeze Order").

In its *Sixth Report and Order* in this proceeding, 12 FCC Rcd 14588 (1997), the Commission noted that, in its *Sixth Further Notice of Proposed Rulemaking*, it stated that it would not accept additional applications for new NTSC stations that were filed after September 20, 1996.<sup>1</sup> The

<sup>1</sup> See *Sixth Further Notice of Proposed Rulemaking*, 11 FCC Rcd 10968, 10992 ¶60

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Commission also noted, however, that it would continue to process applications already on file and those that were filed on or before September 20, 1996, because the Commission did not believe that these applications would have a "significant negative impact" on the development of the DTV Table of Allotments. *Sixth Report and Order*, 12 FCC Rcd at 14635, ¶104. In addition, the Commission stated that when applications for new stations were accepted for filing, it would continue its practice of issuing cut-off lists announcing the opportunity to file competing, mutually-exclusive applications.<sup>2</sup>

## **II. The MO&O Failed to Protect Hispanic's Pending NTSC Application for Channel 32 at Pueblo.**

In its recent *MO&O*, the Commission repeatedly confirmed that it fully intended to protect pending NTSC applications filed by the September 20, 1996, deadline. *See, e.g., MO&O* at ¶¶571, 575, 608, 627. Nevertheless, the DTV Table set forth in the *MO&O* fails to protect Hispanic's pending NTSC application for the Channel 32 facility at Pueblo because it is short-spaced to a co-channel DTV allotment at Denver, Colorado. As stated above, Hispanic's application for the NTSC Channel 32 facility at Pueblo was filed over nine months before the September 20, 1996, filing deadline. The Commission's failure to protect Hispanic's pending NTSC application is inconsistent with the statements the Commission made in its *Sixth Further Notice* and *Sixth Report and Order*,

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(1996) ("*Sixth Further Notice*"). Specifically, the Commission stated that it would not accept additional applications for NTSC stations that were filed after 30 days from the publication of the *Sixth Further Notice* in the Federal Register. A summary of the *Sixth Further Notice* was published in the Federal Register on August 21, 1996. *See* 61 Fed.Reg. 43209 (1996).

<sup>2</sup> *Report and Order*, ¶104; *Sixth Further Notice*, ¶60.

and the Commission neglected to provide any explanation for its failure to consider Hispanic's pending application in establishing the DTV Table. Therefore, for this reason alone, the DTV Table contained in the *MO&O* should be revised to accommodate the existing NTSC allotment of Channel 32 at Pueblo, Colorado, and Hispanic's pending application for that facility.

**III. The Commission Should Substitute DTV Channel 31 for the DTV Channel 32 Allotment at Denver, Colorado, or, Alternatively, Hispanic Should be Permitted to Amend Its Pending NTSC Application to Specify an Available Alternative Channel.**

As stated above, the NTSC allotment of Channel 32 at Pueblo, Colorado is short-spaced to a co-channel DTV allotment for Station KVDR(TV), Denver, Colorado. Assuming, *arguendo*, the Commission should determine that its failure to consider Hispanic's pending NTSC application for the Channel 32 facility at Pueblo does not constitute a sufficient basis, in itself, for granting reconsideration of the allotment of DTV Channel 32 to Denver, the Commission has stated throughout this proceeding that it intends to give broadcasters the flexibility to develop alternative allotment plans where they do not result in additional interference to other stations and/or allotments.

In order to accommodate Hispanic's pending application for the NTSC Channel 32 facility at Pueblo, Hispanic respectfully requests that the Commission change the DTV allotment for Station KVDR(TV), Denver, from Channel 32 to Channel 31. As demonstrated in the attached engineering materials, the substitution of DTV Channel 31 for Channel 32 at Denver would result in Station KVDR receiving a comparable replication match, and would cause only negligible interference to any digital stations (less than 0.6%) and less than 2.5% to other NTSC stations.

Alternatively, in the event the Commission elects not to substitute DTV Channel 31 for Channel 32 at Denver, Hispanic requests that it be permitted to amend its pending NTSC application

to specify operation on Channel 48. As shown in the attached engineering materials, operation on Channel 48 at Pueblo will cause only negligible interference (0.04% loss) to any digital or NTSC stations.

The proposed substitution of DTV Channel 31 for Channel 32 at Denver, or, alternatively, permitting Hispanic to amend its pending NTSC application to specify operation on Channel 48, would effectuate the Commission's pronouncements in its *Sixth Further Notice* and *Sixth Report and Order* that it would protect those pending NTSC applications that were on file as of September 20, 1996.

#### **IV. The Proposals Set Forth Herein Would Provide Substantial Public Interest Benefits.**

The proposed substitution of DTV Channel 31 for Channel 32 at Denver, or permitting Hispanic to amend its NTSC application to specify operation on Channel 48, would serve the public interest by promoting the emergence and development of new networks.<sup>3</sup> As far back as 1941, when the Commission adopted its Chain Broadcasting Rules,<sup>4</sup> a primary goal of the Commission was to

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<sup>3</sup> Hispanic's application for the Pueblo facility was filed in tandem with a series of other applications which, together, cover many of the top 100 markets in which there are no full power television stations to primarily affiliate with The WB Television Network ("The WB"), with whom these respective applicants have existing affiliations. Although there is no commitment on the part of either the applicants or The WB to enter into an affiliation agreement, The WB has indicated a willingness to enter into an affiliation agreement with these applicants in the event they are successful in acquiring a station in their respective communities. It should be made clear, however, that the public interest benefit of promoting an emerging network will be achieved regardless of which applicant ultimately acquires the construction permit. The important element is that the NTSC allotment be preserved and that the station become operational and available for affiliation. By the same token, the public interest benefit of promoting emerging networks is served regardless of whether it is The WB or some other new network that gains a primary affiliate in a top 100 market.

<sup>4</sup> See *Report on Chain Broadcasting*, Commission Order No. 37, Docket 4860 (May 1941) at 88 ("Report on Chain Broadcasting"); *Amendment of Part 73 of the Commission's*

remove barriers that would inhibit the development of new networks. The Commission explained that the Chain Broadcasting Rules were intended to "foster and strengthen broadcasting by opening up the field to competition. An open door to networks will stimulate the old and encourage the new."

*Report on Chain Broadcasting* at 88.

The successful emergence of new networks, however, depends in large part upon their ability to attract and retain local affiliates, which is the life blood of any national network. Moreover, for emerging networks, it is critical that they be afforded the opportunity to compete for affiliates as quickly as possible. Indeed, the large financial losses that confront any national network in its initial years of operation can be stemmed only by obtaining additional affiliates to carry the emerging network's programming. In many markets, however, there simply are not enough stations to provide affiliates for emerging networks in addition to those of the more established networks. Thus, the Commission should make the requested change in the DTV Table which, by permitting an additional broadcast station to serve the Denver television market, will help promote emerging networks.

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*Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d 318, 333 (1970); *Fox Broadcasting Co. Request for Temporary Waiver of Certain Provisions of 47 C.F.R. §73.658*, 5 FCC Rcd 3211, 3211 n.9 (1990), (citing, Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership, and Regulation* (Vol. 1 Oct. 1980)), waiver extended, 6 FCC Rcd 2622 (1991).

Although the Commission has noted that it is not its function to assure competitive equality in any given market, it has acknowledged its “duty at least to take such actions as will create greater opportunities for more effective competition among the networks in major markets.”<sup>5</sup> The history of the Commission’s financial interest and syndication (“finsyn”) rules provides a good illustration of how the Commission has remained steadfast in its commitment to the goal of nurturing new networks. In 1970, when the Commission first adopted the finsyn rule, it noted that “[e]ncouragement of the development of additional networks to supplement or compete with existing networks is a desirable object and has long been the policy of this Commission.” *Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d at 333. More than two decades later, when the Commission first relaxed and later eliminated the finsyn rule, it did so at the behest of the then-newest network entrant, Fox.<sup>6</sup> The FCC’s goal of fostering new networks also is reflected in

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<sup>5</sup> See, e.g., *Television Broadcasters, Inc.*, 4 RR 2d 119, 132 (1965) (Commission granted a short-spacing waiver to an ABC affiliate based largely upon its finding that the station had inferior facilities compared to those available to other national networks in the market, which resulted in a “serious competitive imbalance”), *recon. granted in part on other grounds*, 5 RR 2d 155 (1965); *New Orleans Television Corp.*, 32 RR 1113 (1962) (short-spacing waiver granted for the purpose of assuring the existence of a third truly competitive station in the market, thereby making available competitive facilities to the networks).

<sup>6</sup> Pending its review of the finsyn rule, the Commission granted Fox’s request for a limited waiver of the rule. *Fox Broadcasting Co.*, 5 FCC Rcd at 3211 (1990). As Commissioner Duggan explained, “Fox has been a bright and innovative force. The existence of a fourth network is certainly in the public interest. . . . Fox deserves to be encouraged.” *Broadcasting & Cable*, May 7, 1990, ed., p. 28; *accord, Application of Fox Television Stations, Inc. for Renewal of License of Station WNYW-TV, New York, New York*, 10 FCC Rcd 8482, 8528-29 (1995) (Commissioner Quello stating in his concurring statement, “I believe . . . that the creation of the fourth network was a compelling public interest goal.”). Similarly, in deciding to phase out the finsyn rule entirely in 1995, the Commission evaluated the rule’s impact on “[t]he overall business practices of emerging networks, such as Fox, in the network television and syndication business . . . [and t]he growth of additional networks, including the development of Fox and its position vis-à-vis the three major networks.” *Evaluation of Syndication and Financial Interest Rules*, 10 FCC Rcd 12165, 12166 (1995).

the Commission's relaxation of its multiple ownership rules. *See Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, 100 FCC 2d 17, 48 (1984) (relaxing restrictions on multiple ownership advances the Commission's diversity goal by providing alternatives to the three television networks).

The Commission also has crafted other rules and granted a variety of waivers designed to foster the development of new networks over the years. In 1967, for example, the Commission granted a waiver of the dual network rule to ABC, the then-new network entrant, in connection with ABC's four new specialized radio networks. Although operation of the four networks violated the dual network rule, the Commission nevertheless concluded that waiver of the rule was appropriate because ABC's proposal "merits encouragement as a new and imaginative approach to networking."

*Proposal of American Broadcasting Cos., Inc. to Establish Four New Specialized "American Radio Networks,"* 11 FCC 2d 163, 168 (1967). The Commission explained that it was "of more than usual importance to encourage to the extent possible innovation and experimentation in the operation of networks." *Id.* at 165.

As these examples illustrate, the Commission has remained steadfast in its commitment to the goal of encouraging new networks. Indeed, the Commission has consistently concluded for more than fifty years that the development of new networks -- with the accompanying diversity of viewpoint that they bring -- serves the public interest. In order for emerging networks to survive, however, it is imperative that they be afforded the opportunity to compete for additional local affiliates. The requested change in the DTV Table of Allotments will help facilitate the Commission's longstanding interest in promoting the emergence of new networks by providing an additional broadcast station with which to affiliate in the Denver market.





WHEREFORE, in light of the foregoing, Ch 32 Hispanic Broadcasters, Ltd., respectfully requests that the Commission GRANT reconsideration of its *MO&O* by substituting DTV Channel 31 for Channel 32 at Denver, Colorado, or, alternatively, permit Hispanic to amend its pending NTSC application to specify operation on Channel 48 at Pueblo.

Respectfully submitted,

CH 32 HISPANIC BROADCASTERS, LTD.

By: 

Stuart Mitchell

Its Counsel

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Alexandria, VA 22309-1225  
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April 20, 1998

**Engineering Statement**  
**Pueblo, CO Channel 32**  
**Wes, Inc. Broadcast Consultants**

The program used to demonstrate interference and service replication percentages in this study was the OET FLR program, OET Bulletin 69, running on our own Sun Microsystems computers. These computers have been verified to give identical results to the runs generated by OET. The spacing programs are our own proprietary programs utilizing the FCC broadcast database and DTV database.

Due to a digital channel Channel 32 being assigned to Denver, CO 1,143 km away, a study was conducted to propose moving the digital channel 32 to channel 44. The study showed that it would receive a 99.8% match and would result in negligible interference to any digital or NTSC stations (less than 0.1%) and would give an increase of population of 1,409 over the NTSC.

Should the Commission prefer moving the proposed NTSC channel 32 in Pueblo, CO the TV channel spacing study shows channel 48 open to such a change. The OET FLR studies show negligible (0.04% loss) to any NTSC or DTV stations. Also, attached is the DTV channel spacing study.

  
Pete E Myrl Warren, III      4/19/98  
Date  
Whose qualifications are a matter of  
record with the Commission

Study with Denver, CO, as it is presently on DTV Channel 32

Run begins Fri Apr 17 18:38:35 1998, host gilwell

Analysis of: 31N CO DENVER

	POPULATION	AREA (sq km)
within Noise Limited Contour	2072593	18998.4
not affected by terrain losses	2047242	16662.6
lost to NTSC IX	0	4.0
lost to additional IX by ATV	2929	96.0
lost to all IX	2929	100.0

Analysis of: 32A CO DENVER

HAAT 317.0 m, ATV ERP 233.2 kW, direction 50.0 degrees T, F/B = 26.8 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	2072593	18998.4
not affected by terrain losses	2050702	17134.6
lost to NTSC IX	0	16.0
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	0	16.0
percent match ATV/NTSC	100.0	100.0

Analysis of: 59N CO DENVER

	POPULATION	AREA (sq km)
within Noise Limited Contour	2086357	19564.0
not affected by terrain losses	2045259	16526.8
lost to NTSC IX	0	0.0
lost to additional IX by ATV	0	0.0
lost to all IX	0	0.0

Analysis of: 43A CO DENVER

HAAT 356.0 m, ATV ERP 144.8 kW, direction 8.0 degrees T, F/B = 19.0 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	2086357	19564.0
not affected by terrain losses	2054909	17391.1
lost to NTSC IX	0	0.0
lost to additional IX by ATV	5508	76.0
lost to ATV IX only	5508	76.0
lost to all IX	5508	76.0
percent match ATV/NTSC	99.9	99.8

Analysis of: 41N CO DENVER

	POPULATION	AREA (sq km)
within Noise Limited Contour	1917572	13446.2
not affected by terrain losses	1872629	11934.0
lost to NTSC IX	0	0.0
lost to additional IX by ATV	1961	76.0
lost to all IX	1961	76.0

Analysis of: 40A CO DENVER

HAAT 344.0 m, ATV ERP 74.8 kW, direction 40.0 degrees T, F/B = 20.5 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	1917572	13446.2
not affected by terrain losses	1888962	12102.0
lost to NTSC IX	22	16.0
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	22	16.0
percent match ATV/NTSC	100.0	100.0

Finished Fri Apr 17 18:48:14; run time 0:08:48

44524 calls to Longley-Rice; path distance increment 1.00 km

Denver, CO, moved from DTV Channel 32 to DTV Channel 44

□

Run begins Fri Apr 17 19:45:04 1998, host providence

Analysis of: 31N CO DENVER

	POPULATION	AREA (sq km)
within Noise Limited Contour	2072593	18998.4
not affected by terrain losses	2047242	16662.6
lost to NTSC IX	0	0.0
lost to additional IX by ATV	2929	100.0
lost to all IX	2929	100.0

Analysis of: 44A CO DENVER

HAAT 317.0 m, ATV ERP 294.6 kW, direction 50.0 degrees T, F/B = 26.8 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	2072593	18998.4
not affected by terrain losses	2049045	16982.6
lost to NTSC IX	0	0.0
lost to additional IX by ATV	3323	156.0
lost to ATV IX only	3323	156.0
lost to all IX	3323	156.0
percent match ATV/NTSC	99.8	99.2

Analysis of: 59N CO DENVER

	POPULATION	AREA (sq km)
within Noise Limited Contour	2086357	19564.0
not affected by terrain losses	2045259	16526.8
lost to NTSC IX	0	0.0
lost to additional IX by ATV	0	0.0
lost to all IX	0	0.0

Analysis of: 43A CO DENVER

HAAT 356.0 m, ATV ERP 144.8 kW, direction 8.0 degrees T, F/B = 19.0 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	2086357	19564.0
not affected by terrain losses	2054909	17391.1
lost to NTSC IX	0	0.0
lost to additional IX by ATV	7986	220.1
lost to ATV IX only	7986	220.1
lost to all IX	7986	220.1
percent match ATV/NTSC	99.8	99.1

Analysis of: 41N CO DENVER

	POPULATION	AREA (sq km)
within Noise Limited Contour	1917572	13446.2
not affected by terrain losses	1872629	11934.0
lost to NTSC IX	0	0.0
lost to additional IX by ATV	1961	76.0
lost to all IX	1961	76.0

Analysis of: 40A CO DENVER

HAAT 344.0 m, ATV ERP 74.8 kW, direction 40.0 degrees T, F/B = 20.5 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	1917572	13446.2
not affected by terrain losses	1888962	12102.0
lost to NTSC IX	22	16.0
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	22	16.0
percent match ATV/NTSC	100.0	100.0

Finished Fri Apr 17 19:54:17; run time 0:08:57

44726 calls to Longley-Rice; path distance increment 1.00 km

\*\*\*\*\* DTV TO NTSC CHANNEL SPACING STUDY \*\*\*\*\*

Job title: Denver, CO

Latitude: 39 43 45

Digital Channel: 44

Longitude: 105 14 12

Database file name: tv980408.edx

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
41o	KRMT	7935	DENVER	CO	2	L	170.9	14.6	<24.1	9.5
41o	KRMT	7936	DENVER	CO	2	C	170.9	14.6	<24.1	9.5

\*\*\*\*\* End of channel 44 study \*\*\*\*\*

Study Title: Denver DTV 32 moved to DTV 44  
Denver, CO Channel 44

DTV Study Station, Transmitter Coordinates: 39-43-45 N 105-14-12 W

Study distance: 300 km

\*\*\*DTV TO DTV STUDY RESULTS\*\*\*

City of License	ST	Chan	Distance	Bearing	Req. Dist	Diff.
Denver	CO	43	6.41	165.15	<32.2	25.79

Station is in the clear.

Study Title: Pueblo, NTSC 32 moved to NTSC 48  
Pueblo, CO Channel 48

NTSC Study Station, Transmitter Coordinates: 38-44-43 N 104-51-41 W

Study distance: 300 km

\*\*\*NTSC TO DTV STUDY RESULTS\*\*\*

City of License	ST	Chan	Distance	Bearing	Req.Dist	Diff.
Castle Rock	CO	46	78.38	13.17	96.60	-18.22
Denver	CO	40	99.52	342.39	96.60	2.92
Denver	CO	51	114.35	343.54	96.60	17.75
Lamar	CO	50	209.17	110.44	96.60	112.57
Leadville	CO	49	135.84	294.25	88.50	47.34

Station is short-spaced to 1 stations.

\*\*\*\*\* TV CHANNEL SPACING STUDY \*\*\*\*\*

Job title: Pueblo, CO, Hispanic Bdct  
 Channel: 48  
 Database file name: c:\tvsrc\tv980226.edx

Latitude: 38 44 43  
 Longitude: 104 51 41

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
53o	KWHD	7833	CASTLE ROCK	CO	2	L	13.1	78.4	31.4	47.0
41o	KRMT	8052	DENVER	CO	2	L	342.6	99.5	95.7	3.8
41o	KRMT	8053	DENVER	CO	2	C	342.6	99.5	95.7	3.8

\*\*\*\*\* End of channel 48 study \*\*\*\*\*



Pueblo 32 moved to channel 48 with original pattern and power (1700 kW)

Run begins Thu Apr 9 15:16:18 1998, host gilwell

Analysis of: 48N CO PUEBLO

	POPULATION	AREA (sq km)
within Noise Limited Contour	878962	22158.2
not affected by terrain losses	624124	18717.2
lost to NTSC IX	29255	44.1
lost to additional IX by ATV	14180	300.8
lost to all IX	43435	344.9

Analysis of: 69A CO PUEBLO

HAAT 1147.0 m, ATV ERP 83.8 kW, direction 20.0 degrees T, F/B = 18.7 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	878962	22158.2
not affected by terrain losses	662231	19403.0
lost to NTSC IX	0	0.0
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	0	0.0
percent match ATV/NTSC	100.0	100.0

Finished Thu Apr 9 15:21:37; run time 0:03:14

12573 calls to Longley-Rice; path distance increment 1.00 km

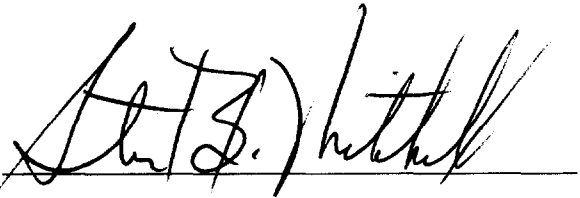
**CERTIFICATE OF SERVICE**

I, Stuart Mitchell, hereby certify that on this 20th day of April, 1998, copies of the foregoing "Petition for Reconsideration" were hand delivered or mailed first-class, postage pre-paid, to the following:

Roy J. Stewart, Chief\*  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 314  
Washington, DC 20554

Barbara A. Kreisman, Chief\*  
Video Services Division  
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Federal Communications Commission  
1919 M Street, N.W., Room 702  
Washington, DC 20554

Station KVDR(TV)  
Fox Television Stations, Inc.  
501 Wazee  
Denver, CO 80204

A handwritten signature in black ink, appearing to read "Stuart Mitchell", is written over a horizontal line.

\* Hand Delivered